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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. MANUEL EDUARDO MEJIA, Appellant.	)	2 CA-CR 2011-0132 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20102568003

Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

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H O W A R D, Chief Judge.

¶1 After a jury trial, appellant Manuel Mejia was convicted of one count of armed robbery, one count of aggravated robbery, and one count of burglary. He was sentenced to concurrent, minimum terms of imprisonment, the longest of which was

seven years. On appeal, Mejia argues the trial court erred by excluding evidence concerning the victim and admitting hearsay evidence. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to sustaining the verdicts. *State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008). Mejia and a friend visited the home of one of the victims. The victim, P., showed them some marijuana that she had under her couch. The next day when P. answered the door two men, Bland and Romero, entered the apartment, both with guns, and told the occupants to get on the ground. The men repeatedly asked P. where was the "dope." P. offered to give them her purse and the men took it. One of the men lifted up the couch and looked under it. Finding nothing, both men left and got into a car where a third person was already in the driver's seat. The car then drove off.

¶3 P. then called 9-1-1 and, about four minutes later, police officers located the car and began following it. Mejia jumped out of the car with P.'s purse and began running away, pursued by officers. Officers used a "taser" to subdue Mejia and arrested him. Mejia stated there was a gun in P.'s purse, which the officers located after having watched him discard it. P. testified that when the men took the purse from her the gun had not been in it. Bland and Romero also were found in the car. Mejia was tried and convicted as previously stated and this appeal followed.

Admissibility of Evidence

¶4 Mejia argues the trial court erred by granting the state's motion in limine to preclude evidence that P. had been using and selling drugs. He contends that such evidence was relevant to her bias, motive, and credibility and that this ruling violated the Confrontation Clause by preventing him from "fully cross-examining" P. We generally review the court's evidentiary rulings for an abuse of discretion, but we review de novo evidentiary rulings that implicate the Confrontation Clause. *State v. Ellison*, 213 Ariz. 116, ¶ 42, 140 P.3d 899, 912 (2006).

¶5 The state filed a motion in limine to preclude evidence of whether P. had "consumed drugs in the presence of her son or whether her son was exposed to drug use in the home at any time prior to or after" the date of the incident, arguing the evidence was irrelevant. In response to the trial court's questions, Mejia stated the evidence was "only relevant to the point [that] she's not being forthright with detectives, and so it just goes to her credibility." He also argued the evidence was relevant to whether P. had been "completely upfront with police in the beginning with regard[] to drug use or whether or not she sells drugs."

¶6 The trial court permitted evidence that, the day before the home invasion, P. had pulled marijuana out from under a couch to sell it, had told a story about holding a large amount of drugs, permitting the inference she could be a drug seller. The court also permitted Mejia to introduce evidence that P. had been using marijuana the day of the home invasion while her son was present in the home, but had denied to detectives that there had been drugs and paraphernalia in the house. It precluded any other evidence of

P.'s use of drugs around her son and of anything found during the course of serving a search warrant, finding "the probative value [of such evidence] does not outweigh the danger of unfair prejudice."

¶7 Because the substance of the precluded "drug trafficking" evidence Mejia sought to introduce is not clear from the context, he is required to have made an offer of proof in order to prevail on a claim that the evidence was excluded erroneously. Ariz. R. Evid. 103(a)(2). He did not, and he therefore has waived any argument concerning the preclusion of evidence. *Id.* Additionally, as demonstrated above, Mejia's argument that he was prevented from presenting evidence that P. sold drugs or had not been forthright initially with the police is contrary to the record. He was allowed to inquire into those areas. Furthermore, the order precluding other evidence was based on Rule 403, Ariz. R. Evid., and the trial court's finding that the probative value of the evidence did not outweigh the danger of unfair prejudice. Mejia fails to challenge this basis for the court's ruling, and argues only that the evidence was relevant. *See State v. Bigger*, 227 Ariz. 196, ¶ 41, 254 P.3d 1142, 1154 (App. 2011) (court may exclude relevant evidence under Rule 403). Consequently, any such argument is waived. *See* Ariz. R. Crim. P. 31.13(c)(1)(vi) ("An argument . . . shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on."); *State v. Gurrola*, 219 Ariz. 438, n.3, 199 P.3d 693, 694 n.3 (App. 2008) (argument waived when appellant did not challenge basis for trial court's ruling).

¶8 Mejia also argues the ruling violated his right under the Confrontation Clause to cross-examine P. fully. To preserve an argument for appellate review, a defendant must make sufficient argument to allow the trial court to rule on the issue. *State v. Fulminante*, 193 Ariz. 485, ¶ 64, 975 P.2d 75, 93 (1999) (An "objection is sufficiently made if it provides the judge with an opportunity to provide a remedy."). "And an objection on one ground does not preserve the issue [for appeal] on another ground." *State v. Lopez*, 217 Ariz. 433, ¶ 4, 175 P.3d 682, 683 (App. 2008). Because Mejia did not object in the trial court based on the Confrontation Clause, he has forfeited the right to seek appellate relief for all but fundamental, prejudicial error. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005) (failure to object to alleged error in trial court results in forfeiture of review for all but fundamental error). Because Mejia does not argue on appeal that any error is fundamental, and because we find no error that can be so characterized, his argument is waived. *See State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17, 185 P.3d 135, 140 (App. 2008) (fundamental error argument waived on appeal); *but see State v. Fernandez*, 216 Ariz. 545, ¶ 32, 169 P.3d 641, 650 (App. 2007) (court will not ignore fundamental error if it finds it).

Hearsay Evidence

¶9 Mejia further contends the trial court erred by admitting hearsay evidence offered by another victim, M., and that he was prejudiced by the error. "We review a trial court's ruling on the admissibility of hearsay evidence for an abuse of discretion." *State v. Bronson*, 204 Ariz. 321, ¶ 14, 63 P.3d 1058, 1061 (App. 2003). If a court erred

in admitting hearsay evidence, we review for harmless error. *See State v. Taylor*, 196 Ariz. 584, ¶¶ 15-16, 2 P.3d 674, 679-80 (App. 1999).

¶10 Hearsay is an out-of-court statement offered for its truth and generally is not admissible. Ariz. R. Evid. 801(c), 802. However, if we find an error is harmless, we will not overturn a conviction. *State v. Sprang*, 227 Ariz. 10, ¶ 15, 251 P.3d 389, 393 (App. 2011). And "an error 'is harmless if we can say, beyond a reasonable doubt, that the error did not contribute to or affect the verdict.'" *Id.*, *quoting State v. Bible*, 175 Ariz. 549, 588, 858 P.2d 1152, 1191 (1993).

¶11 M. testified one of the men went to look under the couch "because the Hispanic male yelled at him, said, He said to look under the couches, to look under the couches." Defense counsel objected based on hearsay stating that "the Hispanic male said somebody else said it." M. responded, "No. I'm saying the Hispanic male—." After another question M. stated, "After the Hispanic male said he said to look under the couches, it was under the couch, to me that was meaning—." The trial court instructed M. to "answer the question and not what it meant to [her]." M. then stated she saw one of the men look under the couch.

¶12 M.'s statement is not clear and could be construed as a non-hearsay statement that one of the intruders, or someone else, told the other intruder to look under the couch. But, even if the statement was hearsay and the trial court erred by admitting it, any error was harmless. As we have recounted, Mejia visited the home the day before the robbery and saw marijuana under the couch. The robber looked under the couch when looking for drugs. P. saw a third person waiting in the car for the two men who had

entered her home and when police found the car four minutes later, Mejia was inside it and fled carrying P.'s purse, which contained a gun. Given the quantum of evidence against Mejia, we cannot find that any hearsay evidence by M. affected or contributed to the verdict. *See id.*

¶13 Mejia argues M.'s statement "provided direct support for the State's theory that Mejia helped plan and direct the robbery." But the statement itself was not connected directly to Mejia in any way. And the jury was not required to find that Mejia planned or directed the robbery but rather that he either: "1. solicit[ed] or command[ed] another person to commit the offense; or 2. aid[ed], counsel[ed], agree[d] to aid or attempt[ed] to aid another person in planning or committing the offense; or 3. provide[d] means or opportunity to another person to commit the offense." The evidence of that was overwhelming.

¶14 Mejia further alleges that without M.'s statement, P.'s testimony that Mejia had been in her home the previous day "was shaky, at best." And, although the friend who had brought Mejia to P.'s home the day before the home invasion stated that he did not remember very much, he did confirm P.'s testimony that he and Mejia had visited P. Moreover, the fact that the men looked under the couches verifies P.'s testimony as much as any vague statement that "he said to look under the couches." Thus, any error was harmless. *See id.*

¶15 Mejia finally argues the admission of any hearsay statements violated his rights under the Confrontation Clause. Because Mejia did not object on this basis in the trial court, he has forfeited review for all but fundamental, prejudicial error. *See State v.*

Womble, 225 Ariz. 91, ¶¶ 10-11, 235 P.3d 244, 249-50 (2010) (objection based on hearsay does not preserve objection based on Confrontation Clause); *State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005). However, Mejia does not argue on appeal that any error was fundamental, and we find none that can be so characterized; therefore, any such argument is waived. *See State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17, 185 P.3d 135, 140 (App. 2008); *State v. Fernandez*, 216 Ariz. 545, ¶ 32, 169 P.3d 641, 650 (App. 2007). Moreover, we review violations of the Confrontation Clause for harmless error, *State v. Bocharski*, 218 Ariz. 476, ¶ 38, 189 P.3d 403, 413 (2008), and, as we have stated above, any error here was harmless.

Conclusion

¶16 For the foregoing reasons, we affirm Mejia's convictions and sentences.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge